

BOARD OF APPEALS CASE NO. 5154

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BEFORE THE

APPLICANTS: Hart Heritage II, Inc.

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ZONING HEARING EXAMINER

**REQUEST: Special Exception to locate a
Personal Care Boarding Home in the
Agricultural District; 405 David Road, Street**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 8/3/01 & 8/8/01

HEARING DATE: September 24, 2001

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Record: 8/3/01 & 8/10/01

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Hart Heritage II, Inc., is seeking a Special Exception, pursuant to Section 267-53F(8) of the Harford County Code, to allow a Personal Care Boarding Home in an Agricultural District.

The subject property is a vacant lot located at 405 Davis Road, Street, Maryland 21154, in the Fifth Election District, and is more particularly identified on Tax Map 17, Grid 2D, Parcel 259, Lot 4, in the subdivision of Dunsen Heights. The parcel contains approximately 10.771 acres.

Mr. Kenneth Skidmore, President of the Applicant, Hart Heritage II, Inc., appeared, and testified that his company is the owner of the subject property. He described the property as a vacant, panhandle lot, slightly over 10 acres in size. According to the witness, the property is zoned Agricultural, and the majority of the lot is designated as Forest Retention and Natural Resource District. The witness testified that his company owns and operates the Hart Heritage Personal Care Boarding Home, on an adjacent property. The existing facility fronts on Grier Nursery Road. Mr. Skidmore indicated that the existing drive of Hart Heritage Personal Care Boarding Home will be used as a common drive for both facilities. The proposed facility will utilize its access to Davis Road only as a service drive. Mr. Skidmore also stated that the subject property is adjacent to the Geneva Farm Golf Course, which is located approximately 1,800 feet to the rear of the property line. With the exception of the adjacent golf course and personal care boarding home, the neighboring properties consist primarily of farmland and parks.

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The Applicant then testified regarding the proposed special exception use. According to Mr. Skidmore, his company intends to construct a personal care boarding facility on the subject property. The proposed construction will consist of a five thousand (5000) square foot, one-story, single-family style dwelling. The building will be similar in appearance to other single-family homes in the area. The proposed facility will house 15 residents. There will be a maximum of 10 employees, with no more than 4 employees working at any given time. The proposed use will be a high level assistance facility where most of the residents have alzheimers or other cognitive disabilities. None of the residents are expected to drive. There are 17 off-street parking spaces planned for the proposed facility.

Mr. Skidmore also testified that, in his opinion, the proposed personal care boarding home will not have any adverse impact to either the surrounding properties or the neighborhood. Traffic is expected to be minimal. According to the witness, the existing Hart Heritage facility has 30 residents, and generates only 3 to 5 visitors per week, and a total of about 20 trips per week. In addition, the proposed facility will be located approximately four hundred and fifty (450) feet away from the closest residence. He stated that there is a significant wooded buffer between the proposed facility and the adjoining properties.

The Applicant introduced a site plan for the property (Applicant's Exhibit 1), showing the location and design of the proposed facility, and an aerial photograph (Applicant's Exhibit 2), showing the location of the subject property in relation to Glasgow Road and Grier Nursery Road.

Mike Kling, the owner of Dunsen Heights Subdivision, Lot 2, which adjoins the subject property, appeared and cross-examined the Applicant regarding the proposed use. After Mr. Skidmore explained the proposal, and reiterated that the existing wooded buffer would remain between the subject property and Lot 2, Mr. Kling indicated that he was satisfied with the explanation, and that he had no further questions for the witness. He also stated that he was not opposed to the granting of the requested special exception.

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Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared and testified regarding the findings of fact and recommendations made by that agency. Mr McClune testified that the Department of Planning and Zoning recommended approval of the subject request in its June 26, 2001 Staff Report. He also testified that the Department had considered all of the provisions contained in Section 267-9I of the Harford County Code entitled “Limitations, Guides & Standards” in connection with this request. According to Mr. McClune, the proposed facility meets all the criteria contained in the aforesaid Code Section, including providing adequate parking for the facility.

Mr. McClune stated that, in his opinion, the proposed use, at the proposed location, would not result in any adverse impact to adjacent properties or have any greater impact on adjacent uses or properties than it would have if it were located elsewhere in the zoning district.

Finally, Mr. McClune stated that the proposed facility could be operated in a manner consistent with the Harford County Code and that the proposed development was consistent with generally accepted engineering and planning principals.

No witnesses appeared in opposition to this application.

CONCLUSION:

The Applicant, Hart Heritage II, Inc., is requesting a Special Exception, pursuant to Section 267-53F(8) of the Harford County Code, to allow a Personal Care Boarding Home in an Agricultural District.

The relevant provisions of the Harford County Code with regard to special exception uses are set forth below.

Section 267-51 provides:

“Purpose.

Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

Section 267-52 provides:

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- “A. Special exceptions require the approval of the Board in accordance with § 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.**
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.**
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.**
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.**
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”**

Section 267-53F(8) provides:

Personal care boarding homes. These uses may be granted in the AG, RR, R, R1, R2, R3, R4, RO, VB and VR Districts, provided that:

- (a) The proposed use shall be located in a single-family detached dwelling.**
- (b) The proposed use meets the minimum lot size requirements for a conventional single-family residence in the district where located.**
- (c) A maximum density of one (1) boarder per two thousand (2,000) square feet of lot area shall be maintained.**
- (d) Adequate off-street parking shall be provided.**
- (e) Where an application is for construction of a new dwelling, the building shall be similar in appearance to other single-family dwellings in the neighborhood.**

Section 267-9I provides:

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“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.**
 - (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.**
 - (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.**
 - (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.**
 - (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.**
 - (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.**
 - (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.**
 - (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.**
 - (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.**
 - (10) The preservation of cultural and historic landmarks.**
- The Court of Appeals established the standard for determining whether to grant a special exception in the case of Schultz v. Pritts, stating that:**

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“...[t]he special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any facts or circumstances negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. (Emphasis in original) 291 Md. 1, 11, 432 A.2d 1319 (1981).

The Schultz court further held that “the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327; citing, Anderson v. Sawyer, 23 Md. App. at 624-25, 329 A. 2d at 724 (1980) and Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31, 214 A.2d 146 (1965).

The Hearing Examiner finds that the Applicant has meet its burden of proof in showing that the requested use meets the prescribed standards and requirements set forth in the Harford County Code. The proposed personal care boarding home is located in an Agricultural District. The lot on which the facility is to be constructed is approximately 10.771 acres. The Code requires a minimum lot size in an Agricultural zone of 2 acres.

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The application requests permission to build a detached single-family dwelling which will house 15 boarders. This is well below the maximum density of one (1) boarder per two thousand (2,000) square feet of lot space. The proposal provides for 17 on site parking places. This allotment should be more than adequate for employees and for the anticipated visitors to the facility. Finally, the proposed new construction will be similar in size and appearance to the personal care boarding facility located on the adjoining property and will resemble similar larger homes found in the neighboring area.

The Hearing Examiner also finds that the Applicant has met its burden of proof in showing that “the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest.” The Applicant testified that the proposed facility will have 10 employees, with only 4 employees working at any given time. None of the residents are expected to drive, and the much larger adjacent facility generates only 20 trips per week in and out of the facility. The property will have a private well and septic system, and other public facilities are adequate to service the proposed personal care boarding home. The property is very secluded, and the proposed dwelling will not be visible to any adjoining property owners.

In addition, the Department of Planning and Zoning considered all of the factors set forth in Section 267-9I of the Harford County Code and concluded that the proposed use at the proposed location would not result in any adverse impact to adjacent uses or properties, or have any greater impact on adjacent uses or properties than it would have if it were located elsewhere in the zoning district. Finally, the witness stated that the proposed facility could be operated in a manner consistent with the Harford County Code and that the proposed development was consistent with generally accepted engineering and planning principals.

The Hearing Examiner recommends approval of the special exception for a personal care boarding home, subject to the following conditions:

1. That the number of residents be limited to fifteen (15) at this time, but may be increased upon the Applicant obtaining the prior approval of the Board, The Department of Health and the Department of Planning and Zoning.

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2. That the proposed facility be limited to the final site plan approved by the Board, and, that any substantial modification to the approved site plan shall require further Board approval.
3. That the Applicant obtain all necessary permits and inspections for the construction and operation of the proposed facility.

Date OCTOBER 24, 2001

**Rebecca A. Bryant
Zoning Hearing Examiner**